

## Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 SOE-02 AID-05 CEA-01 CIAE-00  
COME-00 DODE-00 EB-08 H-01 INR-10 INT-05 L-03  
NSAE-00 NSC-05 OMB-01 PM-05 ICA-11 OES-07 SP-02  
SS-15 STR-07 TRSE-00 ACDA-12 PA-01 /114 W  
-----092989 200406Z /63

R 191132Z APR 78  
FM AMEMBASSY BRUSSELS  
TO SECSTATE WASHDC 6093  
INFO ALL EC CAPITALS  
DOE WASHDC

C O N F I D E N T I A L SECTION 01 OF 03 BRUSSELS 07578

USEEC

PARIS ALSO FOR OECD

E.O.11652: GDS  
TAGS: ENRG, EEC  
SUBJECT: EC COMMISSION'S REFINERY PROPOSAL: COMPANY  
-- RESPONSES TO REQUEST FOR DATA

REF: (A) BRUSSELS 6180 (B) BRUSSELS 4946

1. SUMMARY: ALTHOUGH MOST EUROPEAN OIL COMPANIES AND TWO AMERICAN COMPANIES HAVE PROVIDED INFORMATION ON PLANS TO CLOSE REFINERIES AND ON 1978 REFINERY RUNS IN RESPONSE TO THE EC COMMISSION'S REQUEST, AT LEAST TWO AMERICAN COMPANIES HAVE DECLINED. TWO OTHERS HAVE REQUESTED FURTHER INFORMATION FROM THE COMMISSION ON THE LEGAL IMPLICATIONS BEFORE THEY WILL DECIDE WHETHER TO COMPLY. THE COMMISSION HAS ASSURED THE COMPANIES ORALLY AND IN WRITING THAT THE COMMISSION HAS NOW DECIDED NOT TO TRY TO IMPLEMENT ITS PLAN TO "RATIONALIZE" EC REFINERY PRODUCTION WITH THE VOLUNTARY COOPERATION OF THE COMPANIES UNTIL THE SCHEME  
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HAS BEEN FORMALLY APPROVED BY THE EC COUNCIL. THE COMMISSION IS PRESSING THE COMPANIES FOR THE REQUESTED DATA IN THE MEANTIME FOR AN UP-TO-DATE REPORT ON THE REFINERY SITUATION FOR THE MAY 30 ENERGY COUNCIL. IN OTHER DEVELOPMENTS, US COMPANIES HAVE EXPRESSED CONCERN REGARDING A MEETING BETWEEN A SENIOR COMMISSION OFFICIAL AND THE UNION OF INDUSTRIES OF THE EUROPEAN COMMUNITIES (UNICE) REGARD-

ING THE REFINERY PROPOSAL. IN ADDITION, THE UK'S ENERGY MINISTER HAS ASKED THAT HMG REPRESENTATIVES ATTEND ALL MEETINGS WHERE UK ENERGY MATTERS ARE CONSIDERED AND APPEARS TO BE RENEWING EFFORTS TO BLOCK THE COMMISSION'S PROPOSAL. END SUMMARY.

2. DIRECTOR GENERAL FOR ENERGY WILLIAMS TELEPHONED THE AMBASSADOR ON APRIL 14 IN ORDER TO INFORM HIM GENERALLY OF THE RESPONSE BY THE OIL COMPANIES TO THE COMMISSION'S REQUEST FOR INFORMATION ON EACH COMPANY'S PLANS TO CLOSE EXCESS REFINERY CAPACITY AND ITS INTENDED 1978 REFINERY THROUGHPUT IN THE EC (REF A). THE SAME DAY GEORGES BRONDEL, DIRECTOR FOR OIL AND GAS OF THE EC COMMISSION, GAVE A MISSION OFFICER A MORE DETAILED RUNDOWN.

3. BRONDEL NOTED THAT ALL EUROPEAN COMPANIES, INCLUDING SHELL AND BP, HAVE COMPLIED WITH THE COMMISSION'S REQUEST. OF THE AMERICAN COMPANIES, GULF AND TEXACO HAVE BOTH SUPPLIED THE INFORMATION REQUESTED. EXXON AND MOBIL, HOWEVER, HAVE DECLINED. EXXON, IN ITS REPLY TO WILLIAMS, NOTES THAT THE "COMMISSION IS NOW UNDERTAKING A FORM OF INDICATIVE PLANNING WHICH WOULD SIGNIFICANTLY CHANGE THE ON-GOING RELATIONSHIP THAT HAS DEVELOPED" BETWEEN EXXON AND THE COMMISSION IN RECENT YEARS AND THAT "IN VIEW OF THIS SUBSTANTIAL CHANGE WE MUST RESPECTFULLY DECLINE TO PROVIDE ADDITIONAL DATA ON PLANNED REFINERY RUNS." MOBIL, IN ITS RESPONSE, STATES THAT THE COMMISSION'S PLANS, "OUTLINED MOST RECENTLY DURING THE MARCH 10 MEETING, ARE CONFIDENTIAL

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SHROUDED WITH SERIOUS LEGAL UNCERTAINTIES IN TERMS OF BOTH THE TREATY OF ROME AND US ANTI-TRUST CONSIDERATIONS." THUS, THE LETTER STATES, MOBIL CAN NO LONGER "PARTICIPATE VOLUNTARILY" IN ANY GENERAL MEETINGS OR BILATERAL CONSULTATIONS BETWEEN MOBIL AND THE COMMISSION IN REGARD TO MOBIL'S PLANS FOR CLOSURE OF DISTILLATION CAPACITY AND TO ITS PLANNED 1978 REFINERY RUNS.

4. CHEVRON HAS NOT YET RESPONDED, BUT A MEETING HAS BEEN SCHEDULED FOR LATE APRIL AT WHICH TIME BRONDEL ANTICIPATES CHEVRON WILL PROVIDE THE DATA REQUESTED. IN ITS REPLY, AMOCO STATED THAT BEFORE GOING ANY FURTHER IT WISHES TO CONSULT WITH THE COMMISSION REGARDING THE "LEGAL IMPLICATIONS" OF THE COMMISSION'S REFINERY PROPOSAL WHICH IT SAYS DID NOT COME OUT CLEARLY DURING THE MARCH 10 MEETING. CONOCO'S REPLY, REPORTEDLY INFORMED WILLIAMS THAT HIS REQUEST FOR DATA WAS REFERRED TO ITS LEGAL DEPARTMENT FOR A RESPONSE IN VIEW OF THE LEGAL IMPLICATIONS. CONOCO ALSO INQUIRED WHETHER NECESSARY CLEARANCE HAS BEEN RECEIVED FROM DG-IV, THE COMMISSION'S DIRECTORATE GENERAL FOR COMPETITION. (A SENIOR COMMISSION OFFICIAL EXPRESSED DOUBT THAT AMOCO AND CONOCO INTEND TO PROVIDE THE INFORMATION REQUESTED.)

5. BRONDEL STATED THAT FOLLOWING RECEIPT OF THE NEGATIVE RESPONSES FROM EXXON AND MOBIL, FURTHER BILATERAL MEETINGS WERE HELD LAST WEEK BETWEEN COMPANY LAWYERS AND WILLIAMS IN THE PRESENCE OF JEAN VERGES, DIRECTOR FOR CORPORATE COMBINATIONS AND RULES OF COMPETITION (DG-IV). THE COMPANIES REPORTEDLY EXPRESSED THE VIEW THAT UP-DATING INFORMATION WHICH HAD BEEN PREVIOUSLY SUPPLIED NOW PRESENTED PROBLEMS BECAUSE OF THE FACT THAT IT APPEARED TO BE PART OF A PROCESS INITIATED BY THE COMMISSION WHICH WOULD LEAD EVENTUALLY TO A FORM OF PLANNING OR ALLOCATION OF REFINERY OUTPUT BY THE COMMISSION IN COOPERATION WITH THE COMPANIES WHICH COULD RAISE ANTI-TRUST PROBLEMS. WILLIAMS TOLD BOTH COMPANIES THAT THE COMMISSION HAD NOW

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SS-15 STR-07 TRSE-00 ACDA-12 PA-01 /114 W  
-----093075 200405Z /63

R 191132Z APR 78  
FM AMEMBASSY BRUSSELS  
TO SECSTATE WASHDC 6094  
INFO ALL EC CAPITALS  
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USEEC, PARIS ALSO FOR OECD

DROPPED ITS EARLIER INTENTIONS TO IMPLEMENT ITS PROPOSAL BUT WILL PROCEED IN TWO PHASES. PHASE ONE, WHICH IS NOW UNDERWAY, CONSISTS OF OBTAINING CURRENT INFORMATION ON THE REFINERY SITUATION IN THE COMMUNITY FOR A COMPREHENSIVE AND UP-TO-DATE REPORT TO THE ENERGY COUNCIL SCHEDULED FOR MAY 30. BILATERAL CONSULTATION WITH THE COMPANIES, IF ANY, WOULD BE ONLY FOR THE PURPOSE OF OBTAINING OR AMPLIFYING BASIC INFORMATION. WILLIAMS ASSURED THE TWO COMPANIES THAT THE COMMISSION NOW HAS NO INTENTION OF USING THIS INFORMATION FOR "INDICATIVE FORWARD PLANNING" UNTIL IT HAS RECEIVED THE FULL AGREEMENT OF THE EC COUNCIL. SINCE COUNCIL APPROVAL IS PROBLEMATIC, HE SAID, PROVIDING THE REQUESTED DATA SHOULD PRESENT NO PROBLEMS TO

THE COMPANIES SINCE IT MAY NEVER BE USED FOR PLANNING PURPOSES. ACCORDING TO BRONDEL, WILLIAMS OFFERED TO WRITE THE COMPANIES TO THIS EFFECT AND VERGES SAID HE WOULD ALSO WRITE GIVING THE COMPANIES DG-IV CLEARANCE. VERGES SUGGESTED THE COMPANIES COULD USE THESE TWO LETTERS TO OBTAIN A CLEARANCE FROM THE U.S. DEPARTMENT OF JUSTICE IF THEY FELT SUCH A CLEARANCE WERE NECESSARY.

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6. WILLIAMS HAS WRITTEN VIRTUALLY IDENTICAL LETTERS TO BOTH MOBIL AND EXXON AND IS PREPARED TO ADDRESS SIMILAR LETTERS TO ANY OTHER OIL COMPANY AT ITS REQUEST. IN HIS LETTER, WILLIAMS REFERS TO "SOME MISUNDERSTANDING" REGARDING HIS MARCH 17 REQUEST FOR INFORMATION. AFTER REVIEWING THE PRESENT SITUATION, WILLIAMS NOTES THAT THE PRIMARY PURPOSE OF HIS MARCH 17 LETTER IS TO "UP-DATE THE INFORMATION OBTAINED IN DECEMBER" BECAUSE OF THE DEFERRAL OF THE ENERGY COUNCIL UNTIL MAY 30 AND BECAUSE OF PUBLISHED INFORMATION INDICATING CHANGES IN THE REFINERY PLANS OF SOME OIL COMPANIES. HE STATES THAT THE COMMISSION'S REFINERY PROPOSAL, QUOTE: HAS NOT YET BEEN DISCUSSED BY THE COUNCIL, IS NOT THEREFORE IN EFFECT AND IF NOT AGREED BY THE COUNCIL, MAY NEVER COME INTO EFFECT. THEREFORE, INFORMATION OBTAINED AT THIS TIME IS NOT BEING AND CANNOT BE USED IN THE CONTEXT OF THE PROCEDURES SET OUT IN THE (COMMISSION'S) DOCUMENT. UNQUOTE. WILLIAMS AFFIRMS THAT THE PRESENT REQUEST FOR DATA IS A NORMAL PROCEDURE UNDER THE TREATY OF ROME AND SHOULD CAUSE NO ANTI-TRUST DIFFICULTIES, BUT HE ADDS THAT IT IS UP TO THE COMPANIES TO "REQUEST ANY CLEARANCE THAT (THEY) CONSIDER NECESSARY FROM THE APPROPRIATE AUTHORITIES" IF THEY FORESEE ANY PROBLEMS. HE SAYS THAT THE LETTER FROM DG-IV GIVES THE COMPANIES "WHAT IS REQUIRED AS FAR AS THE COMMISSION IS CONCERNED." WILLIAMS CONCLUDES BY HOPING THAT, IN VIEW OF THESE EXPLANATIONS, THE COMPANIES WILL "UP-DATE THE INFORMATION PROMPTLY ON (THEIR) 1978 REFINERY PLANS."

7. VERGES IN HIS LETTER TO THE TWO COMPANIES AGREES WITH WILLIAMS' OPINION "THAT THE REQUEST FOR INFORMATION CONTAINED IN HIS LETTER OF MARCH 17, 1978 IS A PROPER EXERCISE OF THE POWERS GRANTED TO THE COMMISSION UNDER ARTICLE 213 OF THE EEC TREATY." VERGES SAYS THAT IN THE

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OPINION OF DG-IV, PROVIDING THIS "INFORMATION IN REPLY TO WILLIAMS' REQUEST DOES NOT IN ANY WAY INFRINGE THE COMPE-

TITION RULES OF THE TREATY OF ROME." (COPIES OF ALL  
CORRESPONDENCE REFERRED TO ABOVE HAVE BEEN FORWARDED TO  
EUR/RPE AND EB/FSE.)

8. BRONDEL STATED THAT THE COMMISSION NOW FULLY RECOG-  
NIZES THAT, IF THE EC COUNCIL SHOULD APPROVE THE COM-  
MISSION'S REFINERY PROPOSAL, THE COMMISSION'S IMPLEMENTA-  
TION OF PHASE TWO PROVIDING FOR "INDICATIVE FORWARD  
PLANNING" OF REFINERY THROUGHPUT WOULD RAISE ANTI-TRUST  
PROBLEMS WHICH WOULD HAVE TO BE RESOLVED. WHILE THE  
COMMISSION WOULD PLAN TO INFORM THE US GOVERNMENT THROUGH  
USEC AND PROBABLY THROUGH THE DEPT. OF JUSTICE OF ITS  
INTENTION TO PROCEED, IT UNDERSTANDS THAT NEITHER THE EC  
NOR THE STATE DEPARTMENT CAN OBTAIN ANTI-TRUST CLEARANCES.  
THESE CAN ONLY BE SOUGHT BY THE COMPANIES, BUT THE COM-  
MISSION IS PREPARED TO SUPPORT THE COMPANIES BY PROVIDING  
ALL NECESSARY INFORMATION. BRONDEL ALSO NOTED THAT  
WILLIAMS ASKED THE EXXON REPRESENTATIVE IF THE COMPANY  
WOULD PREFER THAT THE COMMISSION REQUEST THE EC COUNCIL'S  
APPROVAL OF A MANDATORY REFINERY THROUGHPUT ALLOCATION  
SYSTEM. THE EXXON OFFICIAL REPLIED THAT, WHILE A MANDA-  
TORY SYSTEM MIGHT RESOLVE THE ANTI-TRUST ASPECTS, HIS  
COMPANY STRONGLY OPPOSED EXTENSION OF SUCH REGIMENTATION  
OF THE OIL MARKET IN THE EC.

9. THE CONCERN OF SOME AMERICAN COMPANIES HAS APPARENTLY  
BEEN HEIGHTENED BY A MEETING BETWEEN BRONDEL AND THE OIL  
AND GAS GROUP OF THE UNION OF INDUSTRIES OF THE EUROPEAN  
COMMUNITY (UNICE) ON MARCH 15. ACCORDING TO THE UNICE  
MINUTES OF THIS MEETING, BRONDEL TOOK A RATHER TOUGH LINE  
STATING THAT THE "COMMISSION MUST ACT NOW, THOUGH IT HAS  
NOT YET BEEN GIVEN THE GO-AHEAD BY GOVERNMENTS." IN  
ADDITION, ACCORDING TO SEPARATE (AND IN SOME RESPECTS

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-----093095 200403Z /63

R 191132Z APR 78  
FM AMEMBASSY BRUSSELS  
TO SECSTATE WASHDC 6095  
INFO ALL EC CAPITALS

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QUITE DIFFERENT) MINUTES OF THE SAME MEETING PREPARED BY THE HEAD OF THE BELGIAN PETROLEUM FEDERATION, BRONDEL ALSO SAID THAT THE "AMERICAN COMPANIES SHOULD BE FORCED TO FACE UP TO THEIR RESPONSIBILITIES", PRESUMABLY IN REGARD TO RESOLVING ANTI-TRUST PROBLEMS POSED BY THE COMMISSION'S PROPOSAL. HE IS FURTHER QUOTED AS SAYING THAT THE COMMISSION "OPERATES AS A GOVERNMENT" UNDER CERTAIN CIRCUMSTANCES AND THAT THEREFORE IT IS NOT UP TO THE COMMISSION TO "NEGOTIATE" WITH THE US DEPT. OF JUSTICE. (MISSION COMMENT: STATEMENTS AT THE MARCH 15 MEETING ATTRIBUTED TO BRONDEL IN BOTH SETS OF MINUTES (POUCHED EUR/RPE) NOW SEEM TO HAVE BEEN OVERTAKEN BY WILLIAMS' MORE AUTHORITATIVE STATEMENTS AND THE TWO COMMISSION LETTERS NOTED ABOVE. WHAT IS PROBABLY MORE DISQUIETING TO US COMPANIES THAN THE SUBSTANCE OF THE MARCH 15 MEETING IS THE FACT THAT IT SEEMS TO INDICATE THAT THE COMMISSION IS STILL ATTRACTED BY BRUNNER'S CONCEPT OF WORKING WITH AN "ASSOCIATION" ALLEGEDLY REPRESENTING THE EC OIL INDUSTRY BUT LARGELY DOMINATED BY THE SMALLER EUROPEAN COMPANIES. FEW KNOWLEDGEABLE OBSERVERS, HOWEVER, CONFIDENTIAL

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BELIEVE THAT UNICE IS IN A POSITION TO ENTER INTO SERIOUS DISCUSSIONS OF SUBSTANTIVE OIL QUESTIONS WITH THE EC COMMISSION WHICH COULD ARRIVE AT CONCLUSIONS IN ANY WAY BINDING INDIVIDUAL OIL COMPANIES NOT PARTICIPATING DIRECTLY IN THE MEETING. END COMMENT.)

10. FURTHER COMPLICATING THE COMMISSION'S EFFORTS TO CONTINUE CONSULTATIONS WITH THE OIL COMPANIES IS A RECENT REQUEST FROM BRITISH MINISTER OF ENERGY BENN THAT HMG REPRESENTATIVES "SHOULD HAVE THE OPPORTUNITY TO PARTICIPATE IN ANY PART OF A MEETING (WITH OIL COMPANIES) WHERE PLANS IN THE UK ARE DESCRIBED." THE COMMISSION HAS REJECTED THIS REQUEST STATING THAT NATIONAL REPRESENTATIVES CAN ATTEND MEETINGS WITH OIL COMPANIES ONLY WHEN "MAJOR DEVELOPMENTS" ARE DISCUSSED (WHATEVER THAT MEANS). COMMISSION OFFICIALS BELIEVE, HOWEVER, THAT BENN'S DEMAND MAY PRESAGE A RENEWED UK EFFORT AFTER AN AMBIGUOUS PAUSE (PARA 5, REF A) TO PREVENT IMPLEMENTATION OF THE COMMISSION'S REFINERY PROPOSAL. CONFIRMING THIS DEVELOPMENT, A UK PERMREP OFFICER INFORMED THE MISSION THAT HE HAD RECEIVED INSTRUCTIONS TO RAISE SEVERAL OBJECTIONS TO THE REFINERY PROPOSAL AS REVISED AT A MEETING OF THE COUNCIL'S ENERGY WORKING GROUP ON APRIL 19. THIS MEETING

WAS QUITE STORMY AND, HE BELIEVES, MADE ADOPTION OF THE  
PROPOSAL EVEN MORE UNLIKELY. HINTON

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## Message Attributes

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**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
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**Disposition Approved on Date:**  
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**Disposition Event:**  
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**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
**Expiration:**  
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**Original Handling Restrictions:** n/a  
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**Page Count:** 7  
**Previous Channel Indicators:** n/a  
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**Previous Handling Restrictions:** n/a  
**Reference:** 78 BRUSSELS 6180, 78 BRUSSELS 4946  
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**Review Event:**  
**Review Exemptions:** n/a  
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**Review Release Event:** n/a  
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**Review Withdrawn Fields:** n/a  
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**Status:** NATIVE  
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**TAGS:** ENRG, UK, EEC  
**To:** STATE  
**Type:** TE  
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**Review Markings:**  
Sheryl P. Walter  
Declassified/Released  
US Department of State  
EO Systematic Review  
20 Mar 2014  
**Markings:** Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014